



Legal Update

May 1, 2014

The SJC holds that Massachusetts law governs a violation of an abuse prevention order, even if the order was issued by another jurisdiction.

Commonwealth v. Shea, SJC No. 11412 (2014)

Background: The victim, Christine Frawley (hereinafter referred to as “Frawley”) who is a resident of New Hampshire applied for a protective order in New Hampshire against the defendant, Donna Shea, (hereinafter referred to as “Shea”). A New Hampshire court issued a protective order that prohibited Shea from abusing Frawley or having any contact with her or coming within a hundred (100) yards of her. Shea was served with the protective order at her residence in Massachusetts. Less than one month later, Shea applied for a restraining order against Frawley at the Quincy District Court and the judge denied Shea’s petition. After a hearing, the court officer escorted Shea out of the courtroom first and Frawley left a short time later where she encountered Shea. Shea was hiding behind a doorway in a stairwell and she told Frawley that “restraining orders do not work” as she took a picture of Frawley with her phone and shouted “Now everyone will know who you are.” Shea was charged with violating the restraining order and she appealed arguing that the judge in Massachusetts was incorrect in instructing the jury to apply Massachusetts law rather than New Hampshire law when determining whether there was a violation of the 209A order and whether an actual violation occurred.

Conclusion: The SJC held that the Massachusetts judge was correct in applying Massachusetts law for a violation that occurred in Massachusetts even though the protective order was issued in New Hampshire.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department’s legal advisor or prosecutor.

1st Issue: Does Massachusetts law apply to a protective order that is issued out of state?

The SJC evaluated the requirements of M.G.L. c. 209A, § 5A, and found that if another state issues a protective order, it can be "enforced as if it were issued in the Commonwealth" as long as that order is still in effect in the issuing jurisdiction. Additionally, pursuant to the federal full faith and credit clause "the definition of what constitutes a violation is determined by the law of the enforcing state." In *Shea*, the protective order that was issued for the victim prohibits stalking of a person and therefore is protected under M.G.L. c. 209A, §7. The SJC concluded that Massachusetts law governs the violation of such protection orders where the violation occurred in Massachusetts. The SJC also added that since no court has ever ruled on jurisdiction's law would apply if there is a violation of a protective order, the court looks to present sense impression.

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